

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAMMY BURSE,

Petitioner,

v.

Case No. 05-73677

Honorable Patrick J. Duggan

CLARICE STOVALL,

Respondent.

**ORDER DENYING CERTIFICATE OF APPEALABILITY AND FINDING
MOOT PETITIONER'S ELIGIBILITY FOR IN FORMA PAUPERIS STATUS ON
APPEAL**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on June 6, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On September 26, 2005, Petitioner filed this habeas petition pursuant to 28 U.S.C. § 2254, challenging her state court conviction for felony murder in 2003. Petitioner currently is incarcerated at the Robert Scott Correctional Facility in Plymouth, Michigan. On October 4, 2005, this Court issued an order requiring Respondent to file a response to the petition on or before March 31, 2006. On March 29, 2006, Respondent filed her response. Petitioner thereafter filed a notice of appeal with respect to the "Order and Judgment denying [her] Petition for Writ of Habeas Corpus entered in this action on March 29, 2006." Petitioner also moved to proceed in forma pauperis on appeal. The

Sixth Circuit sent a letter to Petitioner on May 23, 2006, indicating that before any appeal under Section 2254 may proceed, “the district court must have determined any liability for the appellate filing fee and certified any issue(s) for appeal.”

This Court has not issued any opinion addressing Petitioner’s request for habeas relief. At this stage, the Court only has required Respondent to file a response to the petition. Petitioner apparently has misconstrued the response, which was filed on March 29, 2006, as an order issuing from this Court. Because the Court has not issued any opinion and/or order granting or denying the petition for habeas relief and has not rendered a final judgment, there is nothing for Petitioner to appeal.

Accordingly, no certificate of appealability shall issue and the issue of Petitioner’s liability for the appellate filing fee is moot.

SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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